IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Bail Appl..No. 7401 of 2007()

CRIME NO.341/2007 OF THE IDUKI POLICE STATION

: PETITIONER/ACCUSED

MATHEW VARGHESE, S/O. VARGHESE,
AGED 35 YEARS, VEZHAVILIL HOUSE, UPPUTHODU P.O.,
IDUKKI DISTRICT.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7401 of 2007

Dated this the 3rd day of December 2007

O R D E R

Application for anticipatory bail. The petitioner, a 35 year old man faces allegations of having committed the offence of attempt to commit rape punishable under Section 376 read with 511 I.P.C. The alleged victim is an elderly woman aged about 53 years. The petitioner contends that there is a property dispute between the rival contestants and on the date in question also there was a wordy duel and altercation between them about such dispute regarding property. The dispute, according to him, was about letting out water from his property to that of the de facto complainant. The altercation that took place has been exaggerated out of context and fanciful allegations of attempt to commit rape are now being raised against the petitioner, it is submitted. The petitioner is absolutely innocent. There are no elements whatsoever of the offence of rape and attempt to commit rape. The petitioner may be saved of the undeserved trauma of arrest and detention, submits the learned counsel for the petitioner.

2. The learned Public Prosecutor does not oppose the

application for anticipatory bail. I have gone through the averments in the F.I.S. The nature of data collected has also been revealed to me. Nature of alleged injuries on the victim has also been read over to me. Having considered all the relevant inputs, I am satisfied that directions under Section 438 Cr.P.C can be invoked.

3. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 10/12/2007. He shall be released on regular bail on condition that he executes a bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

ii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 12 noon on 11/12/2007 and 12/12/2007. During this period, the investigating officer shall be at liberty to interrogate the petitioner in custody and take all necessary steps for the

proper conduct of the investigation. Potency test can also be got conducted during this period. Thereafter the petitioner shall so appear on all Mondays and Fridays between 10 a.m and 12 noon for a period of one month and subsequently as and when directed by the investigating officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(iv) If he were arrested prior to 10/12/2007, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 10/12/2007.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007